

Navigating the Minefield:

Complying with a Patchwork of Lobbying & Ethics Laws



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Presenters



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Outline


- I. The Minefield
 - I. Lobbying
 - II. Ethics & Gifts
 - III. Procurement
 - IV. Hidden Mines
 - V. Public Data

- II. Navigation
 - I. Best practices
 - II. Incorporating into compliance program


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The Minefield



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Landscape


- Generally
- National
- State
- Local

- Changing norms: When “that is how business is done” is no longer how business can be done.

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Ball of Confusion

- Different definitions of “lobbying”
- Different regulatory structures
- Different reporting thresholds
- Different registration and reporting requirements
- Different reporting deadlines
- Different exceptions

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What is “lobbying”?

- Definition(s)
- Direct vs. grassroots vs. shadow

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“Am I a lobbyist?”

- It’s not all crocodile shoes and pocket squares
- Corporate executives / directors
- Lawyers, in-house counsel
- Doctors and hospital executives
- Engineers and architects
- Insurance industries
- Highly-regulated industries (energy; gaming; cannabis)

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The L word

- Scarlet letter
- Risk of unregistered lobbying
- Penalties
- Brand damage

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Big Question: Is it a covered activity?

- Is registration required under the LDA of 1995?
- Is registration required under state and local laws?
- High threshold, loophole-ridden laws, and poor enforcement has led to many to deregister at federal level
- Wide disparity in state laws and enforcement

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Enforcement

- Federal and state
- U.S. Attorney's offices
- New York: Regulator promised enforcement on new regulations
- Common igniters of enforcement

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Compliance Analysis

- Regardless of jurisdiction, questions to ask:
 1. Do you interact with public officials or employees?
 2. Are you attempting to influence any government actions?
 3. Are the government actions covered by law?
 4. Are your activities excepted?
 5. What is the threshold requiring registration?
 6. If registration is required, how long do you have?

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Ethics

- “Ethics by any other name would smell as sweet”
 - Billy Shakespeare
- What is “ethics”?
- For today’s purposes, includes:
 - Post-employment restrictions
 - Nepotism
 - Political activities
 - Conflicts of interest
 - Gifts

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Ethics – Generally

- No “moral compasses”
- *But see, NY Post Test*
- Compare with codes of ethics, federal law, state law, etc.

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Ethics

- Post-employment restrictions (aka “The Revolving Door”)
 - Hiring former government officials carries risk
- Nepotism
- Political activities
- Conflicts of interest
- And...

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Gifts

- How is *that* a “gift”?
- *Anything* of value
- Cash / gift cards
- Tickets (sporting events; theatre; admission)
- Dinners / lunches / drinks
- Travel
- Contributions to NFPs tied to official or within district

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Gifts Continued . . .

- Depends on jurisdiction:
 - Bigger ball of confusion than lobbying laws
 - Exceptions
 - “Nominal” or other dollar thresholds
 - Tickets to charitable events
 - Donations to public entities and/or governments

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Procurement and Contracting

- It's all in the details . . .
- Restrictions on lobbying and/or campaign contributions
- What No Doubt and Get Smart have to do with procurement laws
- Exceptions, exceptions, exceptions...

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Hidden Mines

- Foreign Agents Registration Act (FARA)
- Foreign Corrupt Practices Act (FCPA)
- U.K. Bribery Act
- Byrd Amendment
- Nonprofits: Substantial Part Test
- Municipal lobbying and gift laws

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Beware: Public information

- Lobbying disclosure databases
- State sunlight databases
- Campaign finance databases
- Freedom of information laws
- “It’s become self-aware”—the rise of AI

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Navigation

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Incorporating into Compliance Program

- Prioritizing = finding industry-specific examples
- Building awareness
- Incorporating best practices
- Logistics
- Reinforcing

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Best Practices

- Policies and procedures
 - Gifts (both giving and receiving)
 - Entertainment
 - Lobbying
 - Political activities
 - Campaign contributions
- Training: Tailored to risk, on both laws and policies
- Auditing, monitoring, tracking of interactions and expenses

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Logistics

- Who is responsible for overseeing?
 - Government affairs? GC? Compliance? Accounting?
- How is compensation, time, and/or expenses tracked?
- How are gifts monitored?
- Who is trained?
- What policies are necessary?
 - Very few orgs have lobbying policies (*compare* gifts, political activity, etc.)

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Closing Thoughts

- Goal is awareness, not memorization
- Like any risk, biggest question is whether you are addressing, and if so, how?

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Available Resources

New York Law Journal
www.nylj.com
Outside Counsel
New Comprehensive State Lobbying Regulations
Over the past decade, New Yorkers have grown accustomed to the embrace of "recurring ethics reform" coming from state government officials promising to restore the public trust by reforming ethics and lobbying rules. Historically, these legal measures have come in response to public corruption prosecutions and while little change has occurred in state agencies this year, the aftermath of recent scandals, a significant watershed moment in the evolution of the regulatory environment for public officials has been the state's primary agency for change-making lobbying ethics. For the first time in more than 70 years, the state's primary agency for lobbying, the Joint Commission on Public Ethics (JCPE), has promulgated a new and expanded regulatory framework for public officials and lobbyists.

Prepared by Harris Beach LLC
January 2019

10 THINGS TO KNOW: NEW YORK'S NEW LOBBYING REGULATIONS

- 1. CLARIFIED SPECIFICITY IN FINES**
The current practice of not having "flat" fines for "knowing" or "reckless" violations of the regulations has been clarified. A "knowing" violation is defined as a violation of the regulations with the intent to violate the regulations.
- 2. REPORTING OPTIONS FOR COALITIONS**
Coalitions can be treated as a single entity, or each member can be treated as the reporting entity. A coalition report must include the name of each member and the name of the coalition.
- 3. ONLINE ETHICS TRAINING REQUIRED**
All registered lobbyists must complete ethics training by the end of the calendar year in which they are first registered.
- 4. CONTRACTUAL VERSUS BENEFICIAL CLIENTS**
The regulations distinguish between clients who are contractual and those who are beneficial.
- 5. SOA RESOLUTIONS/PROTESTS**
The regulations require a number of disclosures, including a disclosure of any SOA resolutions or protests.
- 6. NEW LOBBYING APPLICATION AND INTERSTATE**
The regulations require a new lobbying application and an interstate registration process.

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Questions?

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